


आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ STC/15-157/OA/21-22

DIN- 20230364WT0000888C27

आदेश की तारीख	/	Date of Order :	29.03.2023
जारी करने की तारीख	/	Date of Issue :	29.03.2023
द्वारा पारित/Passed by -			
उपेन्द्र सिंह यादव	/	UPENDRA SINGH YADAV	
आयुक्त	/	COMMISSIONER	

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-52/2022-23

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Asarwa, Near Girdharnagar Bridge, Girdharnagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
(as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल, उसकी भी उतनी ही, की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम प्रतियाँ संलग्न की जाएंगी म एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

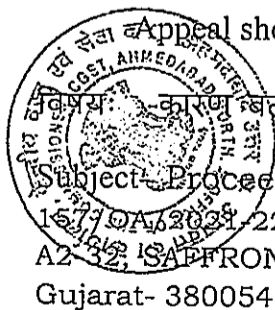
The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970, की अनुसूची, 1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रुपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

The Appeal should also bear a court fee stamp of Rs. 4.00.



कारण सूचना: -

Subject: Proceedings initiated vide Show Cause Notice SCN F.No. STC/15-1677/2021 dated 23.04.2021 issued to M/s JAY MATA TRANSPORT COMPANY, A2-32, SAFRONY APARTMENT, OPP. SARKARI, TUBEWELL, BOPAL, AHMEDABAD, Gujarat- 380054.

ORDER-IN-ORIGINAL NO. AHM-EXCUS - 52/2022-23

M/s JAY MATA TRANSPORT COMPANY, A2-32, SAFFRONY APARTMENT, OPP. SARKARI, TUBEWELL, BOPAL,, AHMEDABAD, Gujarat-380054 were issued Show Cause Notice No. STC/15-157/OA/2021-22 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad.

Brief facts of the case pertaining to Show Cause Notice No. STC/15-157/OA/2021-22 dated 23.04.2021 are as follows:

1. M/s JAY MATA TRANSPORT COMPANY, A2-32, SAFFRONY APARTMENT, OPP. SARKARI, TUBEWELL, BOPAL,, AHMEDABAD, Gujarat-380054 (hereinafter referred to as "the said Assessee" for the sake of brevity) were engaged in providing services and for the same they were registered with Service Tax Department having Service Tax Registration No. AAWPB1318EST003.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" as declared by the Assessee was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the data/records received from CBDT of the said Assessee for the F.Y. 2015-16 to 2016-17, the Sales/Gross Receipt from Services (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of the F.Y. 2015-16 to 2016-17. It also appeared that the said Assessee had declared less/not declared any taxable value in their Service Tax Return (ST-3) for the F.Y. 2015-16 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2015-16 to 2016-17. The details of difference as per CBDT data for the F.Y. 2015-16 to 2016-17 were as under:

TABLE -A

Financial Year	VALUE DIFFERENCE in ITR & STR / TDS & STR) (Whichever is higher) (in Rs.)	Service Tax (in Rs.)
2015-16	15,98,52,460/-	2,23,02,527/-
2016-17	18,97,37,912/-	2,83,02,138/-
TOTAL	34,95,90,372/-	5,06,04,666/-

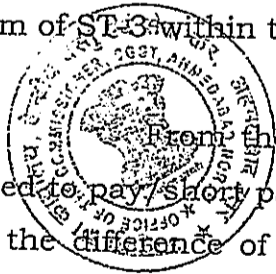
Therefore, it appeared that the said Assessee had less discharged their Service Tax liability and thus were liable to pay Service Tax including Cess [@ 12.36% for F.Y. 2015-16 & from 01-04-2015 to 31-05-2015] ; [@ 14% from 01-06-2015 to 14-11-2015] ; [@ 14.50% from 15-11-2015 to 31-05-2016] and [@15% from 01-06-2016 to 31-03-2017] for amounting to Rs. 5,06,04,666/- on the differential value amounting to Rs. 34,95,90,372/- along with applicable interest and penalty for the F.Y. 2015-16 to 2016-17.

4. As per the provisions of Section 72 of the Finance Act, if any person, liable to pay Service Tax having made a return, fails to assess the tax, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the Assessee on the basis of such assessment.

5. As per the provisions of Section 73(1) of the Finance Act, where any Service Tax has not been levied or paid or has been short levied or short paid by the reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve notice on the person chargeable with Service Tax which had not been levied or paid or which had been short levied or short paid, requiring him to show cause why he should not pay amount specified in the notice.

6. As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid to the credit of the Central Government by 5th day of the month, immediately following the said calendar month in which the payments are received, towards the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that Assessee shall submit their Service Tax returns in the form of ST-3 within the prescribed time.

7. From the foregoing paras, it appeared that the said Assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 5,06,04,666 /- on the difference of taxable value during the period 2015-16 to 2016-17 by declaring less value in their ST-3 Returns vis-a-vis their ITR/Form 26AS, in such manner and within such period prescribed in respect of taxable services received/provided by them with an intent to evade payment of Service Tax. Thus, it appeared that the said Assessee had failed to discharge the Service Tax



liability of Rs. 5,06,04,666/- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) worked out on the total value of Rs. 34,95,90,372/- and therefore, Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

8. In view of above, it appeared that the said Assessee had contravened the provisions of:

- (a) Section 66 of the Finance Act, 1994 in as much as they had failed to collect and pay the Service Tax as detailed above, to the credit of Central Government.
- (b) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had not paid the Service Tax as mentioned above to the credit of the Government of India within the stipulated time limit;
- (c) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, as amended, in as much as they had failed to properly assess their Service Tax liability under Rule 2(1)(d) of Service Tax Rules, 1994 and failed to declare correct value of taxable services as well as exempted services to the department in the prescribed return in Form ST-3.

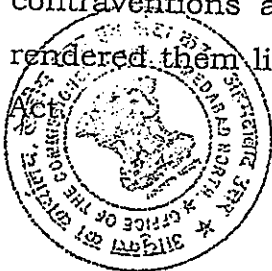
9. It had been further noticed that at no point of time, the Assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 to 2016-17. The Government had from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc., based on mutual trust and confidence are in place. From the evidences, it appeared that the said Assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 5,06,04,666 /-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by them. It appeared that all these material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax.



10. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (as such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said Assessee had short paid/not paid Service Tax of Rs. 5,06,04,666/- on the actual value received towards taxable services provided by them which appeared to be recoverable from them under proviso to Section 73(1) of the Finance Act alongwith interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 in as much as the said Assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said Assessee had not discharged their Service Tax liability and hence were liable to pay interest under Section 75 of the Finance Act.

11. All the above acts of contravention on the part of the said Assessee resulted into non-payment of Service Tax appeared to had been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the said amount of Service Tax amounting to Rs. 5,06,04,666 /- (inclusive of applicable Cess i.e., EC, SHEC, SBC & KKC) not paid was required to be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 alongwith interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

12. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said Assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said Assessee appeared to have rendered them liable to penalty under Section 76 & Section 77 of the Finance



13. Moreover, in addition to the contravention, omission and commission on the part of the said Assessee as stated in the foregoing paras, it appeared that the said Assessee had wilfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax rendering them liable for penalty under Section 78 of the Finance Act, 1994.

14. Therefore, the Assessee (M/s JAY MATA TRANSPORT COMPANY) were issued a show cause notice dated 23.04.2021 asking them as to why;

- i. Differential amount of Service Tax amounting to Rs. 5,06,04,666/- (Rupees Five Crore Six Lakh Four Thousand Six Hundred Sixty Six only) (inclusive of Edu. Cess and S&H Edu. Cess) short paid/not paid by them, should not be confirmed/demanded under proviso to Section 73(1) of the Finance Act, 1994.
- ii. Interest at the appropriate rates should not be recovered from them as prescribed under Section 75 of the Finance Act, 1994 from the due date on which the Service Tax was liable to be paid till the date on which the said Service Tax is paid.
- iii. Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for their failure to make payment of Service Tax payable by them within prescribed time-limit.
- iv. Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for their failure to assess the correct tax liability.
- v. Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 as amended for suppressing and not disclosing the value of the said taxable service provided by them before the department with an intent to evade payment of Service Tax.

DEFENCE REPLY:

15. The Assessee vide their letter dated 06.02.2023, submitted their reply to the show cause notice dated 23.04.2021, wherein they have inter alia stated as under –

- a. That they are engaged in providing Goods Transport Agency Services and they were covered under Reverse Charge Mechanism during the period 2015-16 and 2016-17, whereby the recipient of their services was required to pay the Service Tax and they as the service provider were not liable to pay the Service Tax.



15.1 The Assessee, during the course of personal hearing, vide their letter dated 17.03.2023, submitted their reply to the Show Cause Notice dated 23.04.2021, wherein they have inter alia stated as under –

- i. That M/s. Jay Mata Transport Compnay (Proprietor - Anish Buchasia) is an entity engaged in providing Goods Transport Agency services to its clients.
- ii. That the entity is a proprietorship entity with PAN AAWPB1318E and the proprietor of same PAN is having different entity named as Amrit Roadlines.
- iii. That the Assessee had not done any business in Jay Mata Transport Company and had done all its business in the name of Amrit Roadlines; however as the proprietor of both the entity is same, the Service Tax number of Jay Mata Transport Company was mapped to his PAN number.
- iv. That considering the above, they are submitting all documents wherever applicable of Amrit Roadlines, which is nothing but the same entity with different name.
- v. That they are engaged in providing Goods Transport Agency services to their clients and in accordance with Notification No. 30/2012-Service Tax dated 20.06.2012, services of Goods Transport Agency are covered under reverse charge mechanisam, where recipient of the services shall be liable for making Service Tax payment on the services availed/received by them.
- vi. That considering the said notification they were not liable to collect and pay Service Tax on the services provided by them and they therefore request to consider their submission and drop the proceedings initiated against them and also set aside the demand order raised.

15.2 The Assessee vide their letter dated 17.03.2023 also submitted the following documents –



- a) ITR alongwith statement of Total income for the A.Y. 2016-17 and 2017-18
- b) Audit report alongwith Audited Financials for the F.Y. 2015-16 and 2016-17
- c) Sample copies of invoices with CERA Sanitaryware Limited for Transportation of Sanitaryware Goods
- d) Affidavit for water damage of documents
- e) Confirmation letter from CERA Sanitaryware Limited

- f) Form 26AS in Text Format, as PDF or HMTL of same is not downloadable due to large size of data in it.

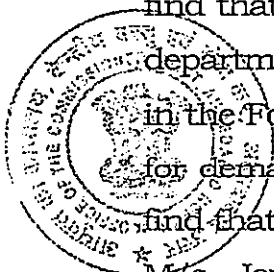
PERSONAL HEARING:

16. Personal hearings were granted to the Assessee on 10.05.2022, 23.06.2022, 29.07.2022, 12.09.2022, 19.10.2022, 17.11.2022, 19.01.2023, 06.02.2023 and 07.03.2023. However the Assessee did not appear for personal hearing on any of the above mentioned dates, but subsequently requested for a personal hearing on 17.03.2023. Accordingly, the Assessee was given the opportunity of personal hearing on 17.03.2023. Shri Keshav Maheshwari, CA attended the personal hearing on behalf of the Assessee on 17.03.2023. During the course of personal hearing Shri Keshav Maheshwari tendered a written submission and submitted that the noticee is a GTA and has provided services to clients/Limited Companies and they are supposed to discharge, the services tax liability on RCM. He also requested to drop the proceedings initiated vide the SCN.

DISCUSSION AND FINDINGS:

17. I have carefully gone through the facts of the case and records available in the case file, the Show Cause Notice dated 23.04.2021, the defence reply dated 06.02.2023, 17.03.2023 and the documents submitted vide letter dated 17.03.2023 by the Assessee.

17.1 I find that the Assessee in their submissions have stated that they are having 2 proprietary firms i.e. M/s. Jay Mata Transport Company and M/s. Amrit Roadlines with same Proprietor namely Anish Buchasia with PAN AAWPB1318E. They have further stated that the Assessee had not done any business in Jay Mata Transport Company and had done all its business in the name of Amrit Roadlines; however as the proprietor of both the entity is same, the Service Tax number of Jay Mata Transport Company was mapped to his PAN number. Accordingly, they have requested to consider all documents wherever applicable of Amrit Roadlines, which is nothing but the same entity i.e. M/s. Jay Mata Transport Company with different name. In this regard, I find that the SCN has been issued on the basis of CBDT data shared with the department for the PAN AAWPB1318E. Accordingly, the total income reflected in the Form 26AS for the PAN AAWPB1318E has been taken into consideration for demanding the Service Tax vide the subject SCN dated 23.04.2021. I also find that the Service Tax Registration No. AAWPB1318EST003 is in the name of M/s. Jay Mata Transport Company, however, the Assessee has not filed any



F. No. STC/15-157/OA/2021-22
ST-3 returns for said AAWPB1318EST003. Further, I find that the Assessee has submitted (1) ITR alongwith statement of Total income for the A.Y. 2016-17 and 2017-18 and (2) Audit report alongwith Audited Financials for the F.Y. 2015-16 and 2016-17 for the PAN No. AAWPB1318E (Anish Buchasia). Therefore, considering the fact that the total income reflected in the Form 26AS for the PAN AAWPB1318E of Anish Buchasia, has been taken into consideration for demanding the Service Tax vide the subject SCN dated 23.04.2021, I hold that the request of the Assessee to consider the documentation in the name of Amrit Roadlines with Shri Anish Buchasia as the proprietor, as their compliance against the subject demand, is required to be considered.

17.2 Accordingly, I find that in the subject matter the following issues are required to be decided by me as an adjudicating authority –

- i. Whether the Service Tax has been correctly demanded vide the Show Cause Notice dated 23.04.2021.
- ii. Whether the contention of the Assessee that they are not liable to pay Service Tax on the services of Transportation of Goods in terms of Notification No. 30/2012 dated 20.06.2012 is correct or otherwise.

18. I find that the genesis of the demand has arisen from the analysis of the Form 26AS and ITR of the Assessee filed by the Assessee with the CBDT for the period 2015-16 and 2016-17 which was subsequently shared by CBDT with the department. The show cause notice states that on the basis of the information shared by the CBDT, it was found that during the year 2015-16 and 2016-17, the Assessee had rendered taxable services and had received income on such services; that the Assessee had not reflected the income earned by them from rendering such services in the ST-3 returns and thereby they had not made the payment of Service Tax on such income. The Assessee was given opportunity to appear for pre show cause notice consultation on 23.04.2021, but they did not avail the same. Therefore the SCN dated 23.04.2021 was issued to the Assessee demanding Service Tax of **Rs. 5,06,04,666/-** (Rs. 2,23,02,528/- plus Rs. 2,83,02,138/-) on the value of total taxable service, provided by them amounting to **Rs. 34,95,90,372/-** (Rs. 15,98,52,460/- + Rs. 18,97,37,912/-) for F.Y. 2015-16 and 2016-17.

18. The SCN is essentially based on the charge that there is a difference in the income appearing under the head 194C in the Form 26AS and the ST-3 of the Assessee; and that the Assessee had not reflected the said

income in their ST-3. However, on perusal of the status of ST-3 return filing on the System Portal, I find that the Assessee has not filed any ST-3 returns. Therefore, the entire amount appearing in the Form 26AS would be taxable value as there is no ST-3 Returns filed by the Assessee, and therefore no question of working out the differential value of figures of Form 26AS and ST-3 Returns. Accordingly, the figures are reproduced in the table below -

TABLE - B

Sl. No.	Year	Gross Total Taxable Value as per SCN (Rs.)	No ST-3 Returns filed, therefore no figures w.r.t. ST-3 Returns	Difference (Rs.) (3 - 4)
1	2	3	4	6
1	2015-16	15,98,52,460	0	15,98,52,460
2	2016-17	18,97,37,912	0	18,97,37,912
	TOTAL	34,95,90,372	0	34,95,90,372

19. Further, the summary of incomes reflecting in Form 26AS, ST-3 Returns and their P&L Accounts is worked out as under -

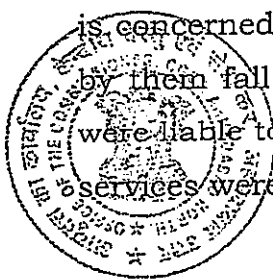
TABLE - C

Sl. No.	Year	Income as per Form 26AS	No ST-3 Returns filed, therefore no figures w.r.t. ST-3 Returns	Income as per P&L A/c.
1	2015-16	15,98,52,460	0	23,48,74,634
2	2016-17	18,97,37,912	0	26,66,87,993
3	TOTAL	34,95,90,372	0	50,15,62,627

19.1 I also find that the SCN has been issued on the basis of the income reflected in the Form 26AS of the Assessee. Therefore for the sake of consistency in computation of tax, I would also rely on the Income reflected in the Form 26AS for the same period.

20. Accordingly, I find that the 1st issue which is required to be determined is as to whether the Service Tax of **Rs. 5,06,04,666/-** (Rs. 2,23,02,528/- plus Rs. 2,83,02,138/-) has been correctly computed and thereby properly demanded for the Financial Year 2015-16 and 2016-17 from the Assessee vide the Show Cause Notice dated 23.04.2021.

20.1 In this regard, I find that the Assessee has not contested the computation of the value of taxable services in the SCN and there is no dispute as far as the receipt of the consideration for provision of service by the Assessee is concerned. The only contention of the Assessee is that the services provided by them fall under GTA services and service was provided to companies who were liable to pay Service Tax under RCM as per Notification No. 30/2012; that services were provided to the companies only and 100% of the turnover is liable



F. No. STC/15-157/OA/2021-22
 for payment under RCM by the recipient of services. Therefore, I find that there is no dispute as far as the provision of services as well as receipt of income on account of provision of such services by the Assessee for the period from 2015-16 and 2016-17 is concerned. The same is as given below:

TABLE - D

Sl. No.	Year	Total Taxable Value (Rs.)
1	2015-16	15,98,52,460
2	2016-17	18,97,37,912
	TOTAL	34,95,90,372

21. The 2nd issue that needs to be decided is, as to whether the services provided by the Assessee during the period are liable for payment under RCM by the recipient of service as per Notification No. 30/2012 as claimed by them or otherwise.

22. Further, in order to examine the liability to pay Service Tax by the Assessee or otherwise on GTA service rendered by them, I would like to look at the concerned legal provisions contained in Notification No. 30/2012-ST dated 20.06.2012. The relevant excerpts of the said notification are reproduced as under for ease of reference:

22.1 Notification No. 30/2012-ST dated 20.06.2012:

GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, the Central Government hereby notifies the following taxable services and the extent of Service Tax payable thereon by the person liable to pay Service Tax for the purposes of the said sub-section, namely:

I. The taxable services, -

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

.....
 (ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is, -

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or



(f) any partnership firm whether registered or not under any law including association of persons;

(II) The extent of Service Tax payable thereon by the person who provides the service and any other person liable for paying Service Tax for the taxable services specified in paragraph I shall be as specified in the following table, namely: -

Sl. No.	Description of service	Percentage of service	Percentage of Service Tax payable by any person liable for paying Service Tax other than the service provider
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%

Explanation I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

22.2 It can be seen from the Notification No. 30/2012-ST that if the person who pays the freight for the service rendered by the goods transport agency and is covered under the list of persons provided under Sr. No. (a) to (f), then the said person is liable to pay 100% Service Tax under reverse charge mechanism being the recipient of service. In other cases, the service provider will be liable to pay Service Tax for rendering the GTA service.

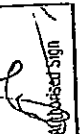
22.3 I find that the income reflected in the Assesse's Form 26AS for the year 2015-16 and 2016-17 is as under -

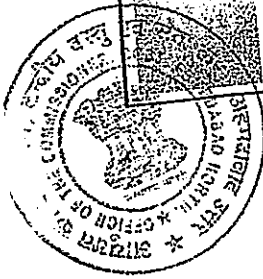
TABLE - E

Sl. No.	Name of the Recipient of Service	2015-16 (Rs.)	2016-17 (Rs.)
1	ASTRAL POLYTECHNIK LIMITED	543000	903000
2	CERA SANITARYWARE LIMITED	147557356	178386957
3	SHRI BHAGWATI FLOUR MILLS PVT. LTD.,	468350	0
4	RAHISH CHANDER ARORA	36800	78700
5	VISHAL GOYAL	74400	113800
6	DURGA SANITILES PRIVATE LIMITED	85000	176000
7	AJAY KUMAR SOOD	278900	319700
8	BEENA RAKESH AGARWAL	101800	949100
9	DAN MAL	383100	0
10	EKAMBARAM SANITORY STORES	108000	0
11	MOHAMMED SALEEM	709600	0
12	MAHENDRA KUMAR SHARMA	273700	0

13	BHAGWATI PRASAD MODI	91000	0
14	BHAGWATI GOUR	611300	155300
15	KISHORE NAND AGARWAL	593500	297000
16	NAND KISHORE NANGALIA	216000	0
17	ULTRAMINE PIPETECH PRIVATE LIMITED	567000	0
18	KUNJI CHAKKU KIZHAKUMTHALA VARGHESE	53900	0
19	VIKAS SANITARY STORES	132600	0
20	AMBICA AGENCIES	1308100	982701
21	SRI SURYA TEJA CONSTRUCTIONS	87000	0
22	SARAYU SANITARY	1210900	394200
23	SURESH KUMAR	596600	1032400
24	VIPAN GUPTA	1000	7000
25	AGRAWAL BATH SQUARE	66900	81360
26	CHOITH RAM	192384	243494
27	SHIV KUMAR AGARWAL	68300	35800
28	SAPPHIRE SALES CORPORATION	28500	0
29	ANIL ARYA	166950	0
30	DOVE CHEMICALS LTD	52500	0
31	IMPACT ENTERPRISES PRIVATE LIMITED	161700	476600
32	JAI AMBA TRADERS	37500	0
33	LUXMI MARBLE & TILES CO	215000	401000
34	NAND KUMAR DAMANI	58800	0
35	ASHOK KUMAR KHIRWAL	404100	1411900
36	BUILDMAT TRADES PRIVATE LIMITED	240600	0
37	BALAJEE UDYOG	234300	78800
38	KAMLA DEVI KHANDLWAL	403300	421200
39	M/S NIRMAN	235320	0
40	PARMOD KUMAR PROP PARMOD TRADING CO.	435600	0
41	BABU LAL CHOHAN	35000	0
42	SUSHIL KUMAR AGARWAL	440000	0
43	LAKSHMI SESHAGIRI RAO VENKATA MADDALA	286800	0
44	PRATIK ENTERPRISE	0	259500
45	KIRAN SURESH DILLIWAL	0	158800
46	NEELADHRI CERAMICS	0	85300
47	SUNRISE SALES CORPORATION	0	101400
48	NARAYAN CHANDRA KEDIA	0	82000
49	LAKSHMI CERAMICS	0	239300
50	ANIL KUMAR AND COMPANY	0	23000
51	MANINDER KAUR	0	93500
52	RUDRAKSHA CREATION PRIVATE LIMITED	0	93600
53	GUPTA BATH WORLD	0	127600
54	SUMAN SINGLA	0	392700
55	BHAGWATI ENTERPRISES	0	430100
56	MODERN MARBLE HOUSE	0	603300
57	NEELKANTH TRADERS	0	44800
58	ANJANI TILES LIMITED	0	57000
TOTAL		159852460	189737912

22.4 On the basis of the names of recipients' reflecting in the 26AS of the Assessee, I find that the Assessee has rendered services to several clients. The Assessee in their submissions have also claimed that the with regard to the GTA services rendered by them, the tax was payable by their clients under RCM as per Notification No. 30/2012-ST. However, except for the services rendered to M/s. CERA SANITARYWARE LIMITED, the Assessee has not submitted any documentary evidences to prove that the GTA services rendered by them was to such entities covered under the list of persons mentioned at Sr. No. (a) to (f) of the Notification No. 30/2012-ST. With regard to the GTA services rendered to M/s. CERA Sanitaryware Limited, the Assessee has submitted (1) Sample copies of invoices issued to CERA Sanitaryware Limited for Transportation of Sanitaryware Goods and (2) Confirmation letter from CERA Sanitaryware Limited based on which it can be seen that M/s. CERA Sanitaryware Limited is an entity covered under the list of persons provided under Sr. No. (a) to (f) of the Notification No. 30/2012-ST and therefore liable for payment of Service Tax under RCM on the services rendered to them by the Assessee. Scanned copies of invoices pertaining to CERA Sanitaryware Limited and the Confirmation letter from CERA Sanitaryware Limited is reproduced herein below for easy reference -

AMRIT ROADLINES CORPORATION A-42, AMRAVALI MALL, BOAPL, AHMEDABAD. PH: 9379-60341		Invoice No : 3419 Invoice Date : 02-Sep-16 PAN No : AAWPB1318E		Amount 60,800.00	
		M/s. CERA SANITARYWARES LTD (CERAMIC) A/c CERA SANITARYWARES LTD KADI	Truck No RJ-04GA-3779	Size 21MT	Rate Fix
Lr No. 59255	Date 02-Sep-16	Particulars KADI TO HYDERABAD Log sheet No : SRV Entry No : Detention Charges : At Loading Point Truck Reached On :02-Sep-16 Truck Release On :03-Sep-16 Transportation Charges : Round Off :		1,694.00 0.00	Total 63,294.00
RUPEES : Sixty Three Thousand Two Hundred Ninety Four Only (1) Service Tax is to be paid by directly by Consignor or Consignee to the govt. (2) Payment should be made by A/c Payee chq only. (3) Interest will be charged @18% P.A. if bill not paid within 15 days. (4) subject to Ahmedabad Jurisdiction.					
				E & O. E. For: AMRIT ROADLINES CORPORATION 	

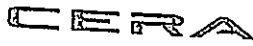


AMRIT ROADLINES CORPORATION
 A-42, ANIRAPALLI MALL,
 BOAPL, AHMEDABAD. PH-93779-60341

M/s. CERA SANITARYWARES LTD (CERAMIC)		Invoice No : 1003		Amount	
A/c CERA SANITARYWARES LTD		Invoice Date : 02-Jun-15		Rate	
KADI		PAN No : AANVPB1318E		Size	
Lr No.	Date	Particulars	Truck No	Rate	Amount
40704	02-Jun-15	KADI TO GAUHATI Log sheet No : SRV Entry No :	RJ-192G-1301	Fix	63,300.00
				Transportation Charges :	1,740.70
				Round Off :	0.30
RUPEES : Sixty Five Thousand Forty One Only					Total
					65,041.00

E. & O. F.
 For AMRIT ROADLINES CORPORATION
 Authorized Sign

- (1) Service Tax is to be paid by directly by Consignor or Consignee to the govt
- (2) Payment should be made by A/c Payee chq only.
- (3) Intrest will be charged @18% P.A. If bill not paid within 15 days.
- (4) subject to Ahmedabad Jurisdiction.



TO WHOMSOEVER IT MAY CONCERN

This is to certify that CERA Sanitaryware Limited (Service Tax No.: AABCM9244NST001) has received the transport service from Amrit Road lines Corporation during FY 2015-16 Rs. 14,17,85,476/- (In word: Rupees Fourteen Crore Seventeen Lakh Eighty-Five Thousand Four Hundred Seventy-Six Only) and FY 2016-17 Rs. 15,54,36,025/- (In word: Rupees Fifteen Crore Fifty-four Lakh Thirty-six Thousand Twenty-five Only)

We declare that I am empowered to execute this confirmation certificate and the same is given under the orders of proper authority as per the delegation of power of the organization.

This certificate has been issued on request of M/s Amrit Road lines Corporation.

Thanking you,
 For CERA SANITARYWARE LIMITED

(Authorized Signatory)



Cera Sanitaryware Limited
 Corporate Office: 7th & 8th Floors, B Wing, Privilion, Ambli UNTS Road, Iscon Crossroads, Ahmedabad 380059, India
 Tel: +91 79 49112222 Email: marketing@pcocera-india.com Web: www.cera-india.com
 Registered Office & Work: C, CIDC Industrial Estate, Kadi 382715, District Mehsana, North Gujarat
 CIN: L26910GJ1999PLC034400



22.5 In view of the above, I find that out of the total taxable income, the income received by the Assessee from M/s. CERA Sanitaryware Limited amounting to Rs. 14,75,57,356/- (2015-16) and Rs. 17,83,86,957/- (2016-17) is eligible for exemption in terms of the Notification No. 30/2012-ST. I also find the Assessee has not produced any evidence, claiming exemption from payment of Service Tax for the GTA services rendered by them to their other clients. Therefore, the arguments put forth by the Assessee that the Service Tax is not payable by them on the entire freight income received by them during FY 2015-16 to 2016-17, is not acceptable for want of proper documents/evidences. Therefore, the Assessee being the service provider is liable to pay Service Tax on the amount received by them towards taxable services provided to their clients other than M/s. CERA Sanitaryware Limited. The taxable value on which the Assessee is liable to pay Service Tax is worked out as under –

Sl. No.	Particulars	2015-16	2016-17	Total
1	Total Taxable Value as per SCN	15,98,52,460	18,97,37,912	34,95,90,372
2	Less Value of GTA Service rendered to M/s. CERA Sanitaryware Limited	14,75,57,356	17,83,86,957	32,59,44,313
3	Net Taxable value on which ST is payable by the Assessee	1,22,95,104	1,13,50,955	2,36,46,059

23. I find that in respect of *Services of Goods Transport Agency in relation to transportation of goods*, the Service Tax is payable on 30% of the taxable value of GTA service under Notification No. 26/2012-ST dated 20.06.2012, provided that Cenvat Credit on inputs, Capital Goods and Input services, used for providing the taxable service has not been taken by the provider of service under the provisions of the Cenvat Credit Rules 2004. Relevant extract of the said notification is reproduced as under:

“Notification No. 26/2012- ST dt. 20.06.2012 (Before amendment vide Noti. No. 08/2015-ST dt. 01.03.2015):

G.S.R..... (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 211 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the Service Tax leviable thereon under section 66B of the said Act, as is in excess of the Service Tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely:-

TABLE

Sl. No.	Description of taxable service (2)	Percentage (3)	Conditions (4)
	Services of goods transport agency in relation to transportation of goods	30	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004."

24. Since the Assessee has not filed any ST-3 return for FY 2015-16 to 2016-17, it is implied they have not availed the cenvat credit under provisions of Cenvat Credit Rules, 2004. Hence, the benefit of abatement in gross value of taxable service is available to the Assessee for discharging their Service Tax liability on GTA service. Having considered this aspect, the Service Tax payable by the Assessee has been worked out and the same is summarized as under:

Year	Value of GTA Service (Rs.)	Abatement @70% (Rs.)	Net taxable value (Rs.)	Rate of S.T.	Service Tax payable (Rs.)
2015-16	1,22,95,104	86,06,573	36,88,531	14.5%	5,34,837
2016-17	1,13,50,955	79,45,669	34,05,286	15%	5,10,793
	2,36,46,059	1,65,52,242	70,93,817		10,45,630

25. Therefore, I hold that the Assessee is liable to pay Service Tax of Rs. 10,45,630/- on GTA service provided by them during 2015-16 to 2016-17. I also find that the SCN had sought demand of Service Tax of Rs. 5,06,04,666/- for FY 2015-16 and 2016-17, but from the table given above, it is seen that the Assessee is liable to pay Service Tax of Rs. 10,45,630/- only out of total demand of Rs. 5,06,04,666/- for FY 2015-16 and 2016-17. Therefore, I hold that the rest of the demand of Service Tax of Rs. 4,95,59,036/- (Rs. 5,06,04,666/- minus Rs. 10,45,630/-) is liable to be dropped, as I find the same to be incorrect and unsustainable.

26. On the basis of above facts and circumstances, discussion and documents available on records, I hold that the Assessee is liable to pay the Service Tax amounting to Rs. 10,45,630/- for the period from FY 2015-16 to 2016-17. Therefore, I find that the Assessee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have failed to pay Service Tax to the tune of Rs. 10,45,630/- though they were liable to pay the same; they have also contravened the provision of Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct Service Tax liability and have failed to file correct ST-3 Returns for the period from April 2015 to June 2017.

27. I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay Service Tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I thus hold that the Assessee is also liable to pay the interest on the demand of Service Tax of Rs. 10,45,630/-.

28. From the facts and discussion aforementioned, I find that Assessee has failed to assess and discharge their Service Tax liability for the period from FY 2015-16 to 2016-17. They have failed to disclose their actual taxable income

by not declaring a part of taxable value of service provided by them, in their Service Tax returns filed by them and not paying legitimate Service Tax due to the government account, though they were having income which was liable to Service Tax. These acts of non payment of Service Tax, non filing of Service Tax returns, suppressing the material facts from the department were done with an intent to evade the payment of Service Tax. The government has from the very beginning placed full trust on the Assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the Assessee are not required to maintain any statutory or separate records under the Excise /Service Tax law as considerable amount of trust is placed on the Assessee and private records maintained by them for normal business purposes are accepted for purpose of Service Tax law. Moreover, returns are also filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the Assessee; therefore, the governing statutory provisions create an absolute liability on the Assessee when any provisions are contravened or there is breach of trust placed on them. Such contravention on the part of the Assessee tantamounts to wilful misstatement and suppression of facts with an intent to evade the payment of the duty/tax. It is evident that such fact of contravention and non payment of Service Tax, as discussed earlier, on the part of the Assessee came to the notice of the department only when the inquiry was initiated by the department, consequent upon the data shared by the CBDT. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of the Finance Act, 1994. Hence, by invoking the extended period of five years, I hold that the Assessee is liable to pay Service Tax of Rs. 10,45,630/- alongwith applicable interest under Section 75 of the Finance Act, 1994. The demand is thus justified on merits. And for the same reasons, the Assessee has rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

29. As far as the issue of imposition of penalty under section 76 of the Finance Act, 1994, is concerned, I observe that penalty under section 76 and section 78 of the Finance Act, 1994, are mutually exclusive and once penalty under section 78 is imposed, no penalty under section 76 can be imposed in terms of proviso inserted in Section 78 of the Finance Act, 1994 w.e.f. 10.05.2008 in

this regard. Hence I refrain from imposing any penalty under section 76 of the Finance Act, 1994.

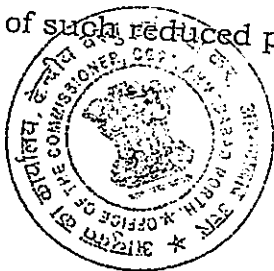
30. As regards, the proposal for imposition of penalty under Section 77 of the Finance Act, 1994, I find that the Assessee had failed to assess their Service Tax liability and had failed to file Service Tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, as discussed at length hereinabove. Thus, they have rendered themselves liable to penal action under Section 77(2) of the Finance Act, 1994.

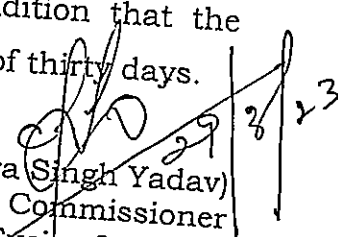
31. In view of the above discussion and findings, I pass the following order:

ORDER

- (i) I hereby confirm the demand of Service Tax of Rs. 10,45,630/- (Rs. ten lakh forty five thousand six hundred thirty only) out of the total demand of Service Tax of Rs. 5,06,04,666/- short/not paid by the Assessee for FY 2015-16 and 2016-17 and order to recover the same from the Assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994. I further drop the rest of the demand of Service Tax of Rs. 4,95,59,036/- holding it to be incorrect and unsustainable.
- (ii) I order to charge the interest at the appropriate rate on the demand of Service Tax of Rs. 10,45,630/- and to recover the same from the Assessee under Section 75 of the Finance Act, 1994;
- (iii) I impose penalty of Rs. 10,45,630/- on the Assessee under the provisions of Section 78 of the Finance Act, 1994.
- (iv) I impose penalty of Rs. 10,000/- on the Assessee under the provision of Section 77(2) of the Finance Act, 1994, for their failure to assess their correct Service Tax Liability and failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

32. However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the period of thirty days.




 (Upendra Singh Yadav)
 Commissioner
 Central Excise & CGST,
 Ahmedabad North.

F. No. STC/15-157/OA/2021-22

Date: __/03/2023

BY REGD. POST A.D./SPEED POST/Hand Delivery

To,
M/s JAY MATA TRANSPORT COMPANY
A2-32, SAFFRONY APARTMENT,
OPP. SARKARI TUBEWELL, BOPAL,
AHMEDABAD, Gujarat- 380054

Copy for information to:

1. The Principal Chief Commissioner of CGST & Central Excise, Ahmedabad Zone.
2. The Assistant Commissioner, Division-VI, CGST & C.Ex., Ahmedabad North.
3. The Superintendent, Range-I, Division-VI, CGST & C.Ex., Ahmedabad North.
- ✓ 4. The Superintendent (Systems), Hq., CGST & C.Ex., Ahmedabad North.
5. Guard File.

